

A19 THE USE OF PHOTOGRAPHS AND ELECTRONIC IMAGES

Reference Points

- NSPCC via www.nspcc.org.uk or 0808 800 5000
- Information Commissioner www.ico.gov.uk
- Privacy and Data Protection/2014/Volume 14/Issue 6, June/Articles/Parental photography at school events: going beyond the exemption in section 36 – PDP 14 6 (7)
- See also 'Section B06 -Data Protection Matters – DPA Model Policy' in this Handbook

Contact Points

Safeguarding Children Officer	01522 554668
Schools Liaison Officer	01522 554884
Legal Services Lincolnshire	01522 552039

Action Points

Introduction

Schools need and welcome positive publicity. Children's photographs add colour, life and interest to articles promoting school activities and initiatives. Making use of photographs in school publicity materials can increase pupil motivation and staff morale and help parents and the local community identify and celebrate the school's achievements.

However, photographs must be used in a responsible way. Schools need to respect young people's and parents' rights of privacy and be aware of potential child protection issues.

Many organisations provide advice on the use of images, especially on the Internet, and most would agree on a few principles to follow to ensure responsible use. However, some organisations (and some local authorities) believe that the only way to be sure of protecting children is to ban the use of photographs in all school publicity materials.

Lincolnshire County Council's view is that schools need to balance potential risks against the advantages of promoting the school in a colourful and attractive way. Risk can be minimised by following the advice in this document and in securing parental consent for the use of photographs/videos. The school should develop a policy in relation to the use of photographs/videos in school publicity materials, on its website, in newspapers and/or outside agency publications, as well as parent permissions for photographing and filming children at school events. The school should make sure that parents are aware of this guidance.

Key Points

Safeguarding Children Issues

Risks may occur when individual pupils can be identified in images. Providing the name and image of a pupil in a publication or on a website allows the possibility of people outside the school identifying and then contacting pupils directly. This is of particular concern where a family has fled domestic violence or a child is subject to child protection procedures, and may also be an issue where a child has been adopted or subject to other court orders.

The NSPCC warns that this information could also make a child vulnerable to abuse by those wishing to groom children and that images can be used or adapted for inappropriate use.

Central government and the NSPCC recommend that you create a recognised procedure for reporting the use of inappropriate images in the same way as you would for any other child protection issue – inform your Safeguarding Children Officer and Children’s Social Care and / or the Police.

Headteachers should decide whether the publication of a photograph/video might pose a risk to a child.

Data Protection Act and School Events

In recent years, The Information Commissioner’s Office (ICO) has published various guidance notes on how the Data Protection Act applies to taking photographs in schools.¹ These guidance notes have all relied upon the domestic purposes exemption at section 36 of the Data Protection Act 1998 (DPA). In the 2014 guidance note, the ICO stated ‘Photographs taken purely for personal use are exempt from the Data Protection Act’. This means that as far as the ICO guidance is concerned the DPA does not prohibit parents, friends and family members from taking photographs of their child and friends participating in school activities for the family album and they can film events at school to watch at home.

However, where photographs/videos may be posted online, the legal position is far more complex than the ICO guidance appears to suggest. The Article 29 Data Protection Working Party has concluded that, under certain circumstances, the activity of an individual processing information online for personal or recreational purposes cannot be considered as a ‘purely personal or household activity’² and thus the exemption would not apply. Such circumstances would include:

- Users with high numbers of friends/contacts, including some not personally known to the user
- Where access to the user’s profile is open to all within the social networking site, or data is accessible via search engines
- Where the individual makes an informed decision to share information beyond selected friends.

¹ Data Protection Good Practice Note ‘Taking Photographs in Schools’, (2005, 2007, 2010, 2014).

² Opinion 5/2009 on online social networking, 00189/09/EN WP 163.

In addition, the European Court of Justice ruled that Article 3(2) (on which section 36 relies) does not apply to 'the processing of personal data consisting in publication on the internet so that those data are made accessible to an indefinite number of people'.³

This suggests that section 36 cannot be seen to automatically apply to parents posting online images taken in school. Where section 36 does not apply, then parents must seek consent of the other children's parents before posting their images online, or limit the number of individuals who can access the images, or not post online at all.

Schools should ensure that their policies on parents filming/taking photographs in schools makes their position clear. Options may include:

- Permitting photography/filming, but prohibiting parents from sharing images online.
- Permitting photography/filming, but having parents sign to say they will comply with guidelines such as keeping images securely, sharing only with family members and not disseminating online without the consent of those with parental responsibility for each child appearing in the images.
- Restricting photography/filming to a specific time and place, such as after a performance, with accompanying requirement that images are not to be shared online.
- Requiring parents to register to film/take photographs, with accompanying requirement that images are not to be shared online.
- Permitting filming/photography only where all parents have given consent.
- Not permitting any parental photography/filming, but having events recorded via official video/photographs taken by an individual with appropriate safeguarding clearance.

It is good practice for schools to manage the way in which parents film events where permitted as constant interruptions will both distract children and prevent them from performing to the best of their ability and also be an annoyance to others in the audience.

(See 'Filming Events' below)

Where schools have concerns about the implications of parental photography/filming for an individual child, they should seek advice from the safeguarding children officer.

Photographs taken by the media are unlikely to breach the Data Protection Act as long as the photographer has the School's permission and students and their guardians are aware that the photographs will be taken and published by the paper and are aware of the context in which they will be used.

Where outside agencies/companies have led activities with pupils and wish to take and use photographs of children to promote their own organisation, parental permission should be obtained, along with information for parents explaining the

³ *Lindqvist case*, ECJ C-101/01

purpose, security of storage and the length of time for which the images would be retained.

Where photographs are taken for official use by schools and colleges, for example for Identity Passes, and the images are stored with personal data such as names, information should be provided to parents explaining the purpose for which the photograph is required, security arrangements for of storage of the image and the length of time for which the images would be retained. This can be included within your general privacy notice. Consent is recommended for these photographs to be taken and used for this purpose.

Appropriate use of images in school publicity material

The problem of identification can be avoided by never using photographs of individual children, only group or whole class shots taken at distance, or by ensuring that faces are out of focus or pupils are partly or wholly turned away from the camera. This is not recommended as good practice, even though it is likely to be effective in overcoming identification issues. This approach can produce very dull photographs that will not promote the school very successfully. A more positive approach is to follow the guidelines below.

- **Secure parental consent.**
- If a photograph is used, avoid naming the child.
- Only use images of children in suitable dress to reduce the risk of inappropriate use. This is a judgement for the Headteacher to make but some activities – swimming, gymnastics and athletics – clearly present a greater risk of potential misuse. With these activities, the content of the photograph should focus on the activity, not on a particular child, and should avoid full face and body shots. So for example with swimming, shots of children in a pool would be appropriate or, if possible, seen waist or shoulder up.
- Never use an image of a child who is subject to a Court Order.
- Establish whether the images will be retained for further use.
- Make sure images are stored securely and used only by those authorised to do so.
- Do not re-use photographs of children (or teachers) after they have left the school.

For any old photographs, where you believe individuals may no longer be identifiable due to the passage of time, please seek advice from any of the contacts listed on page 1 before publishing.

Websites

The basic advice for using photographs on a website is no different from their use in any other kind of publication or publicity material. However, you do need to be more aware of the potential risk of inappropriate use of images because of the lack of control you have over who might see the image and the wide extent of misuse of the internet by certain people.

Make sure your consent form explicitly includes publication on the Internet. It is not sufficient to re-use consent for printed publication.

Simple technology features such as watermarking may stop the misuse or downloading of your images. Care should be taken to ensure that a file name of a photograph cannot identify a pupil, e.g. marygreen.jpg

Newspapers

Newspapers may want to include the names of pupils in photographs that they intend to use. Ensure that you have secured parental consent and that parents are quite clear that the named photograph will appear in a newspaper and/or on a newspaper's website. In order to provide parents with accurate information as to how images will be used so that they can give an informed consent, schools should obtain written confirmation from the newspaper as to where they will publish the images.

For photographs of larger groups e.g. 'Class 6W' it should be sufficient to simply state 'Class 6W from School', however, names will usually be requested. If this is the case and you have secured consent, you should not have significant concerns as to their use.

For smaller groups of up to about 9 pupils, individual names may be requested. Head teachers would need to balance the level of risk against the benefits of publication and make their decision accordingly. Again, if consent has been secured then schools are doing what is reasonably practicable, given the risk involved.

The County Council does not seek to ban the publication of pupils' names in newspaper articles or as captions with photographs.

Whilst recognising that there is a low level risk, cases are actually very rare though widely publicised. The control measures therefore need to be suitable and sufficient. Ensuring consent, clarifying purpose and use and following the guidance in this document are reasonable control measures.

Under no circumstances whatsoever should any possible contact details be released.

The use of photographs in newspapers is already subject to strict guidelines. The Press Complaints Commission's Code of Practice states that:

- Journalists must not interview or photograph a child under the age of 16 on subjects involving the welfare of the child in the absence of or without the consent of a parent or other adult who is responsible for the children.
- Pupils must not be approached or photographed while at school without the permission of the school authorities.

There is no breach of the Data Protection Act in simply passing on a child's name to a journalist so long as you have secured parental consent. If schools or parents have any concerns regarding the use of photographs by the press, they should contact the Independent Press Standards Organisation (IPSO)..

N.B. Parental consent for newspaper publicity images is vital. It has been known for children placed in refuges for their own safety, to be located as a result of their photograph appearing in the newspaper.

Commercial Photographers/Film Makers

If a commercial photographer/film maker is used, the following advice from the NSPCC is helpful:

- Provide a clear brief about what is considered appropriate in terms of content and behaviour.
- Issue the photographer with identification which must be worn at all times.
- Let children and parents know that a photographer will be in attendance at an event and ensure they consent to both the taking and publication of films and photographs.
- Do not allow unsupervised access to children or one-to-one photo sessions at events.
- Do not approve/allow photo sessions outside the event or at a young person's home.

If children or parents have any concerns about inappropriate or intrusive photography, they should report them to the event organiser who should record them in the same manner as any other child protection concern.

If schools or parents have concerns regarding the use of filmed images by TV companies, they should contact the Office of Communications (Ofcom).

Parental Consent

You should develop your own photography consent form, which makes clear your policy on:

- How and where photographs will be used
- The period of consent; and
- The storage and deletion of photographs

You may wish to include consent for photographs to be taken and used, along with other parental permissions as part of your registration process when a child starts at your school. You could then ask for consent for the duration of the child's time at the school and avoid the need to ask for parental consent on each and every occasion that you take photographs.

Although this usually means that you won't have to renew parental consent until a child changes school or starts at sixth form, you will have to be careful to record any changed circumstances. This will be easier if you keep photographs and signed consent forms together. You should retain consent forms on file while the child is still at school.

Don't forget that you also need consent from teachers and any other adults who may appear in the photograph or video.

Actions for Governors

- To consider the County Council's advice as set out in this document.
- To consider the type of images you deem suitable and which appropriately represent the school.
- To develop a policy in relation to the use of images of pupils in school publications, publicity materials, and on the school's website.
- To develop a procedure to ensure that parental permission has been obtained to use photographs of pupils.
- To develop a policy in relation to parents filming and photographing children in school and subsequent use of images.
- To ensure parents are aware of and support the policy.

For sample letter see Appendix 1.

Appendix 1

School Details etc.

Dear parent,

Atschool, we think it is important to use photographs of our pupils enjoying the varied activities of school life to promote the positive aspects of the work that we do.

We use photographs in our internal publicity materials such as school brochures and booklets, on our corridor and classroom displays, for staff training and assessment purposes and on our web site. From time to time, articles and photographs of special events will appear in newspapers.

To do all we can to ensure all photographs of our pupils are used correctly, we undertake to;

- Obtain your permission each year to use photographs of children, including newspaper publication;
- Observe the County Council’s guidelines on the use of photographs;
- Only use photographs for the purposes stated above;
- Store all electronic images securely and destroy them when your child leaves the school.
- Ask that you follow our policy when you take photographs of your child at school events.

I assure you that we have a responsible approach to the use of photographs and do hope that you are able to support us in publicising the many positive aspects of the work that we do.

I would be grateful therefore, if you are in agreement with our intentions, that you complete the slip below and return it to.....at school, by....., and this will act as your consent to your child(ren) being photographed for the coming year. Next year a new form will be required.

Yours etc.

.....

To the head teacher, school.

I have read and understood the school policy on the use of photographs and hereby give my consent that photographs of my child(ren)..... are used for the purposes stated in the policy.

I further agree that I consent to images of my child(ren) appearing on the school web site, subject to the necessary controls being in place.

Signed..... Date.....

Name.....Child’s class no.....

Comments.

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